IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1735 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJBAHUDAR HANUMANSING RAJPUT - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS ARCHANA R ACHARYA for Petitioner(s) : 1,
MR SP HASURKAR A.G.P. for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR DA BAMBHANIA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 20/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS)

1. Rule. Service of rule is waived by the learned advocates for the

respective parties.

2. The petitioner, who claims to be public spirited citizen, has filed this petition by way of Public Interest Litigation, whereby he has challenged the public notice issued by the Gujarat Slum Clearance Board ["the Board" for short] for the lands of area known as Sachin/Kansad, District Surat dated 21st January, 2006, published in local newspaper "Gujarat Mitra" daily dated 22nd January, 2006, as illegal, arbitrary and discriminatory, since the same is issued without following legal procedure required to be adopted by the Board. The grievance made in the petition is that respondent no. 2 i.e. the office of Slum Clearance Board, Surat has acquired some lands from the farmers in the areas known as Sachin and Kansad for distributing the said lands for the purpose for which they are acquired. The said lands were acquired for the purpose of constructing dwelling house and/or dividing them into plots and to distribute amongst the poor people. It is further contended that instead of distributing such lands, it was, in collusion with the builders, land grabbers and contractors, the Officers of the Board had given the same to the persons having vested interest and thereby had constructed some big buildings, bungalows and row houses upon the said lands. By giving examples of the alleged malpractice having taken place in the past, it is contended that same irregularities and malpractice may not be repeated and, therefore, the present petition is filed.

3. On perusal of the conditions of the auction stated in the newspaper cutting attached to the petition, it is clear that the Board has decided to dispose of the vacant houses along with the plot/land of the poor people by way of sale by auction cum tender. The conditions of the public notice suggest that the owner of the factory registered under the Factories Act can only fill up the tender for the residential purpose of the workmen. Further the owner can fill

up the tender for one division prescribed in the notice. However. at the time of opening of the tender, the presence of the workmen is not compulsory but the owner or the partner of the factory can remain present at the time of opening of the tender. The auction will not be made plot-wise but will be made on the total number of plots on the basis of 1 sq.mtr., area.

4. The petitioner has also made a grievance that the decision to dispose of the land by the Board by way of auction is also contrary to the general practice, since in the past, the Board disposed of the plots by adopting draw methods. As the petitioner had approached at a very belated stage i.e., when the proceedings of the auction were about to commence, we declined the grant of ad-interim relief, when the matter was placed for admission before us on 6th February, 2006. While issuing notice to the respondents, we directed the respondents to get all the details regarding the proceedings of the auction.

4.1. In response to the notice, the respondents appeared through their advocate Mr. Bambhania. Respondent no. 3 also filed affidavit-in-reply. After having heard the learned advocates for the respective parties, and having perused the contents of the petition, we are of the view that the respondents have carried out the proceedings initiated by them in pursuance of the advertisement published in "Gujarat Mitra daily" dated 21st January, 2006 in lawful manner. Mr. Natvarlal Chavda, Secretary of the Gujarat Slum Clearance Board - respondent no. 3 herein has filed affidavit-in-reply, wherein in para 5 it is pointed out that respondent no. 2 has acted in the best interest of administration and public at large and with a view to see that the public property is dealt with in open competitive zone. The public advertisement issued by the Board inviting bids has been based on basic criteria that in urban agglomeration person may have his abode at the reasonable consideration and

the Government money is secured. Further in para 6 it is pointed out that for disposing of the land belonging to the public authorities, mode available is by competitive bids from and amongst the persons falling within a particular class eligible for. No land can be dealt with in private dealing with any individual. However, care has been taken to the effect that the applicant, who applies for, hails from that class only. While dealing with the question of allotment, in para 7 it is pointed out as under :-

(1) The applicant should be the worker and application for allotment should be in the name of the worker.

(2) Only the worker will get the title, right and interest and none else.

(3) The worker has to construct the premises as per the approved plan given along with the application form, as approved by the Town Planning Authority.

(4) It shall not be transferable without prior permission of the Board and only transfer is permissible in favour of the his or her legal heirs and or in a given case in favour of some category person, either urban poor and or industrial worker and of that class and or for the member of those classes who are otherwise eligible.

(5) Each application for constructed premises and plot shall be accompanied with an undertaking for development of the land, which is only a small piece of plot admeasuring 25 mtrs., and/or 40 mtrs as per the plans approved and given along with the application form.

(6) No application for a group of individual is permissible except each applicant has to apply individually along with

necessary undertaking and documents.

5. In view of the aforesaid conditions, it is clear that without any manner of doubt the Board has taken proper care to see to it that the allotment of the land in question shall be made in favour of the workmen and the workmen only and none else and the workmen has to construct the premises as per the approved plan along with the application form as approved by the Town Planning Authority. The plots are also not transferable without the prior permission of the Board and it is permissible only in favour of his or her legal heirs. In view of this, we do not find any substance in the allegation made by the petitioner that the Board is allotting the land in collusion with the builders and the contractors to such persons who are having vested interest in the land in question.

6. Ms. Archana Acharya learned advocate for the petitioner has apprehended that on completion of the allotment and bids, vacant residential units shall be alloted in favour of the persons other than the category of the workmen. In support of her say she has invited our attention to the following averments made by the deponent in the affidavit-in-reply.

> "Even after completion of this allotments and bids, about 200 residential units are vacant for allotment on first come first basis. If anybody turns up and it shall be allotted on fulfillment of conditions and payment of consideration within 48 hours."

6.1. Mr. Bambhania learned advocate for the respondents has clarified that the vacant residential units will be alloted to the eligible persons as stated in the application itself. In that connection he has invited our attention to the later portion of the averments made in the affidavit-in-reply, wherein it is stated

as under :-

> "Even the Government and/or any authority may not provide for that, when open land is required to be dealt with. However, it shall be dealt with from and amongst the class and classes itself and no outsider is permitted, who is not eligible for allotment."

7. In view of this, it is clear without any manner of doubt that the exercise undertaken by the Board as far as the allotment of the plots in question is concerned, is just, proper and in conformity with the procedure adopted by it. Thus, the allegations made by the petitioner are without any substance. The apprehension on the part of the petitioner that the allotment of the plot in question made by the Board is nothing but a paper show and it is quite likely that in future they will disposed of the plots in question in favour of the persons other than the workmen, is devoid of any merits. However, it is always open for the petitioner to raise the grievance as and when such situation arise. *Prima facie,* we do not see any cause of apprehension. However, for abundant caution, we direct the Board to remain consistent with their policy by not allotting the lands in question to the persons other than the workmen or urban poor whose list is attached on the record of the petition.

8. Subject to the above directions, the petition is rejected. Rule is discharged. Considering the peculiar facts and circumstances of the case, no order as to costs.

[Kshitij R. Vyas, J.]

[Akshay H. Mehta, J.]

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